

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In Re: OpenAI, Inc. Copyright Infringement
Litigation

1:25-md-03143-SHS

This Document relates to:

DAILY NEWS LP, et al.

Case No. 1:24-cv-03285-SHS-OTW

Plaintiffs,

v.

OPENAI, INC., et al.,

Defendants.

**DEFENDANT MICROSOFT’S ANSWER TO THE
DAILY NEWS LP, ET AL.’S COMPLAINT**

Defendant Microsoft Corporation submits this Answer to the Complaint filed by Plaintiffs on April 30, 2024, in the above-captioned matters. Where the Complaint combines allegations about Microsoft and OpenAI together, Microsoft’s responses below apply solely to allegations related to Microsoft, and Microsoft states that it lacks sufficient knowledge or information sufficient to form a belief regarding such allegations against OpenAI and on that basis denies them. To the extent not expressly admitted below, Microsoft denies each and every allegation of the Complaint.

I. NATURE OF THE ACTION

1. Microsoft admits that ChatGPT and Microsoft Copilot added to Microsoft’s

market value. The rest of paragraph 1 states conclusions of law and argument by Plaintiffs for which no response is required. To the extent a response is nonetheless deemed necessary, Microsoft denies the allegations of paragraph 1.

2. Microsoft admits that it uses and pays for computers, specialized chips, programmers and other employees, and facilities. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 2 and therefore denies them.

3. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 and therefore denies them.

4. Paragraph 4 states conclusions of law and argument by Plaintiffs for which no response is required. To the extent a response is nonetheless deemed necessary, Microsoft denies the allegations of paragraph 4.

5. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 and therefore denies them.

6. Microsoft denies that it “simply take[s] the work product of reporters, journalists, editorial writers, editors, and others who contribute to the work of local newspapers.” Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 6 and therefore denies them.

7. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 7 and therefore denies them. Microsoft denies the remainder of the allegations in paragraph 7.

8. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 and therefore denies them.

9. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 and therefore denies them.

10. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 and therefore denies them.

11. Microsoft admits that *The State of Local News: The 2022 Report* was published by P.M. Abernathy on June 29, 2022 and is available at <https://localnewsinitiative.northwestern.edu/research/state-of-local-news/2022/report/>. Microsoft otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in paragraph 11 and therefore denies them.

12. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 and therefore denies them.

13. Denied.

14. Paragraph 14 states conclusions of law and argument by Plaintiffs for which no response is required. To the extent a response is nonetheless deemed necessary, Microsoft denies the allegations of paragraph 14.

15. Microsoft admits that it uses paywalls and licenses to protect products that it offers. The remainder of the allegations of paragraph 15 are conclusions of law and argument by Plaintiffs for which no response is required. To the extent a response is nonetheless deemed necessary, Microsoft denies the remainder of the allegations in paragraph 15.

16. Microsoft admits that its market capitalization has increased in the past year. The remainder of the allegations of paragraph 16 are conclusions of law and argument by Plaintiffs for which no response is required. To the extent a response is nonetheless deemed necessary, Microsoft denies the remainder of the allegations in paragraph 16.

17. Paragraph 17 states conclusions of law and argument by Plaintiffs for which no response is required. To the extent a response is nonetheless deemed necessary, Microsoft denies the allegations of paragraph 17.

II. JURISDICTION AND VENUE

18. Admitted.

19. Microsoft admits that it has made available and sold GPT-based software and services. Microsoft admits that it maintains offices and employs personnel in New York, including some personnel who are involved in its AI-related operations. Microsoft denies that Microsoft or OAI committed infringement when OAI trained its models, or that Microsoft assisted in any infringement. Microsoft does not contest jurisdiction and venue in this Court. To the extent a further response is required, the remaining allegations in paragraph 19 are denied.

20. Paragraph 20 states conclusions of law for which no response is required. To the extent a response is nonetheless deemed necessary, Microsoft admits that venue is proper in the Southern District of New York. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegation regarding OAI's licensing practices, and therefore denies those allegations. Except as expressly admitted, Microsoft denies the allegations of paragraph 20.

III. THE PARTIES

21. Microsoft admits that Daily News, LP is a limited partnership and that it publishes digital and print products. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 21 and therefore denies them.

22. Microsoft admits that Chicago Tribune Company, LLC is a limited liability company and that it publishes digital and print products. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 22

and therefore denies them.

23. Microsoft admits that Orlando Sentinel Communications Company, LLC is a limited liability company and that it publishes digital and print products. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 23 and therefore denies them.

24. Microsoft admits that Sun-Sentinel Company, LLC is a limited liability company and that it publishes digital and print products. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 24 and therefore denies them.

25. Microsoft admits that San Jose Mercury-News, LLC is a limited liability company and that it publishes digital and print products. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 25 and therefore denies them.

26. Microsoft admits that DP Media Network, LLC is a limited liability company and that it publishes digital and print products. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 26 and therefore denies them.

27. Microsoft admits that ORB Publishing, LLC is a limited liability company and that it publishes digital and print products. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 27 and therefore denies them.

28. Microsoft admits that Northwest Publications, LLC is a limited liability company and that it publishes digital and print products. Microsoft lacks knowledge or information

sufficient to form a belief as to the truth of the remaining allegations in paragraph 28 and therefore denies them.

29. Microsoft admits that it is a Washington corporation with a principal place of business and headquarters in Redmond, Washington. Microsoft also admits that it is a minority investor in OpenAI Global LLC. Except as expressly admitted, Microsoft denies the remaining allegations set forth in paragraph 29.

30. Microsoft admits that there were joint efforts between Microsoft and OpenAI to create supercomputer technologies suitable for developing and operating LLMs. Microsoft further admits that it has access to OAI's LLMs. Microsoft further admits that it was noted during an October 2023 earnings call that "more than 18,000 organizations now use Azure OpenAI Service, including new-to-Azure customers." Microsoft denies the remainder of allegations in paragraph 30.

31. Microsoft admits that the OpenAI Defendants are Delaware entities. Microsoft otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 and therefore denies them.

32. Microsoft admits that OpenAI, Inc. is a Delaware nonprofit corporation with a principal place of business in San Francisco, California and was formed in December 2015. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 32 and therefore denies them.

33. Microsoft admits that OpenAI LP is a Delaware nonprofit corporation with a principal place of business in San Francisco, California, and was formed in 2019. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 33 and therefore denies them.

34. Microsoft admits that OpenAI GP, LLC is a Delaware limited liability company with a principal place of business in San Francisco, California. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 34 and therefore denies them.

35. Microsoft admits that OpenAI, LLC is a Delaware limited liability company with a principal place of business in San Francisco, California, and was formed in September 2020. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 35 and therefore denies them.

36. Microsoft admits that OpenAI OpCo, LLC is a Delaware limited liability company with a principal place of business in San Francisco, California. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 36 and therefore denies them.

37. Microsoft admits that OpenAI Global, LLC is a Delaware limited liability company with a principal place of business in San Francisco, California. Microsoft admits that it is a minority investor of OpenAI Global LLC. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 37 and therefore denies them.

38. Microsoft admits that OAI Corporation, LLC is a Delaware limited liability company with a principal place of business in San Francisco, California. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 38 and therefore denies them.

39. Microsoft admits that OpenAI Holdings, LLC is a Delaware limited liability company. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of

the remaining allegations in paragraph 39 and therefore denies them.

IV. FACTUAL ALLEGATIONS

A. The Publishers

40. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40 and therefore denies them.

41. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 and therefore denies them.

42. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42 and therefore denies them.

43. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43 and therefore denies them.

44. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44 and therefore denies them.

45. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45 and therefore denies them.

46. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46 and therefore denies them.

47. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47 and therefore denies them.

48. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48 and therefore denies them.

49. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49 and therefore denies them.

50. Microsoft lacks knowledge or information sufficient to form a belief as to the

truth of the allegations in paragraph 50 and therefore denies them.

51. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 and therefore denies them.

B. Defendants' GenAI Products¹

1. A Joint Enterprise Based on Mass Copyright Infringement

52. Microsoft admits that OpenAI was formed in December 2015 as a non-profit organization. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 52 and therefore denies them.

53. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53 and therefore denies them.

54. Microsoft admits that OpenAI LP is a for-profit enterprise that was founded in 2019, and that Microsoft is a minority investor in it. Microsoft denies that it has authority and influence over OAI's operations. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 54 and therefore denies them.

55. Microsoft admits that OAI released GPT-1 and GPT-2 models in 2018 and 2019 respectively, and that it released GPT-3 in 2020. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 55 and therefore denies them.

56. Microsoft admits that GPT-3.5 and GPT-4 are more powerful than earlier GPT models. Microsoft admits that OpenAI's GPT-4 Technical Report was published in March 2023. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the

¹ The headings and sub-headings used herein are reproduced as they were used in the Complaint. The reproduction of these headings should not be taken as an admission by Microsoft, and to the extent they are intended to convey allegations rather than simply argument, they are denied.

remaining allegations in paragraph 56 and therefore denies them.

57. Microsoft admits that the article titled *OpenAI Co-Founder on Company's Past Approach to Openly Sharing Research: 'We Were Wrong'* by James Vincent was published on March 15, 2023. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 57 and therefore denies them.

58. Microsoft admits that ChatGPT is a text-generating chatbot that requires user-generated prompts. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 58 and therefore denies them.

59. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59 and therefore denies them.

60. Microsoft admits that a blog titled *Introducing ChatGPT Enterprise* by OpenAI was published on August 28, 2023. Microsoft admits that an article titled *OpenAI hits \$2 bln revenue milestone - FT* by Reuters was published on February 9, 2024. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 60 and therefore denies them.

61. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 61 and therefore denies them.

62. Denied.

63. Microsoft admits that its CEO Satya Nadella stated “something we’ve been partnered with OpenAI deeply now for multiple years” in reference to OpenAI’s LLMs. Microsoft admits that it built and operates the Azure hosting platform, that it worked with OpenAI to design supercomputers suitable for training and operating large language models as part of the Azure hosting platform, and that the Azure hosting platform was used by OpenAI to

train and operate one or more of its LLMs. Microsoft denies the remaining allegations set forth in paragraph 63.

64. Microsoft admits that it built and operates the Azure hosting platform, that it worked with OpenAI to design supercomputers suitable for training and operating large language models as part of the Azure hosting platform, and that the Azure hosting platform was used by OpenAI to train and operate one or more of its LLMs. Microsoft denies the remaining allegations set forth in paragraph 64.

65. Microsoft admits that its CEO Satya Nadella stated: “We buil[d] the infrastructure to train their models. They’re innovating on the algorithms and the training of these frontier models” in reference to OpenAI’s LLMs. Microsoft admits that it built and operates the Azure hosting platform, that it worked with OpenAI to design supercomputers suitable for training and operating large language models as part of the Azure hosting platform, and that the Azure hosting platform was used by OpenAI to train and operate one or more of its LLMs. Microsoft denies the remaining allegations set forth in paragraph 65.

66. Microsoft admits that Satya Nadella stated in an interview on CNBC’s Fort Knox program “beneath what OpenAI is putting out as large language models, remember, the heavy lifting was done by the Azure team to build the compute infrastructure because these workloads are so different than anything that’s come before and so we needed to completely rethink even the data center up the infrastructure that first gave us even a shot to build the models. And now we’re translating those models into products.” Microsoft denies the remaining allegations set forth in paragraph 66.

67. Microsoft admits that a blog post titled *Microsoft Announces New Supercomputer, Lays Out Vision for Future AI Work* by Jennifer Langston was published on May 19, 2020, and

is available at <https://news.microsoft.com/source/features/ai/openai-azure-supercomputer/>.

Microsoft further admits that the quoted language in paragraph 67 appears in said blog post and respectfully refers the Court to that document for its content. Except as expressly admitted, Microsoft denies the allegations in paragraph 67.

68. Microsoft admits that it built and operates the Azure hosting platform, that it worked with OpenAI to design supercomputers suitable for training and operating large language models as part of the Azure hosting platform, and that the Azure hosting platform was used by OpenAI to train and operate one or more of its LLMs. Microsoft admits that Mr. Nadella stated “They do the foundation models, and we do a lot of work around them, including the tooling around responsible AI and AI safety.” Microsoft admits that a paper titled *Sparks Of Artificial General Intelligence: Early Experiments With GPT-4* by Sébastien Bubeck and others was published in 2023. Except as expressly admitted, Microsoft denies the allegations in paragraph 68.

69. Microsoft admits that it built and operates the Azure hosting platform, that it worked with OpenAI to design supercomputers suitable for training and operating large language models as part of the Azure hosting platform, and that the Azure hosting platform was used by OpenAI to train and operate one or more of its LLMs. Microsoft admits that some of its products use one or more of OpenAI’s LLMs, and that such LLMs have been designed to generate new text content that may mimic a human written response. Except as expressly admitted, Microsoft denies the allegations in paragraph 69.

70. Microsoft admits that paragraph 70 reflects a cleaned-up version of statements made by Mr. Nadella in an episode of the podcast *On with Kara Swisher*. Except as expressly admitted, Microsoft denies the allegations in paragraph 70.

71. Microsoft admits that it built and operates the Azure hosting platform, that it worked with OpenAI to design supercomputers suitable for training and operating large language models as part of the Azure hosting platform, and that the Azure hosting platform was used by OpenAI to train and operate one or more of its LLMs. Microsoft admits that paragraph 71 reflects a cleaned-up version of statements offered by Mr. Nadella offered the quoted remarks in an episode of the podcast On with Kara Swisher. Except as expressly admitted, Microsoft denies the allegations in paragraph 71.

2. How GenAI Models Work

72. Paragraph 72 states conclusions of law and argument by Plaintiffs for which no response is required. To the extent a response is nonetheless deemed necessary, Microsoft denies the allegations of paragraph 72.

73. Microsoft admits that sentences and paragraphs are generated by appending output tokens to the input tokens and feeding them back into the model, and that this LLM operation is a part of the stack that makes up Bing Chat to generate responses to user queries, also known as prompts. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 73 and therefore denies them.

74. Microsoft admits that LLMs contain numbers called “parameters” (or “weights”) and that the training corpus is used to adjust those numbers based on statistical and mathematical modeling. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 74 and therefore denies them.

75. Microsoft admits that the final value of each parameter (or weight) of an LLM is calculated during the process sometimes called “training” (and more often called “pre-training”), and that this process involves, among other steps, repeatedly using portions of the training data with tokens to be predicted masked out, using the actually predicted tokens to calculate the error

in the LLM prediction, and then repeatedly adjusting each parameter in accordance with statistical and mathematical modeling to attempt to minimize the overall error function of the LLM. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 75 and therefore denies them.

76. Microsoft admits that models may be further fine-tuned after the pre-training process, including by using additional specific training sets or by using human feedback methods. Microsoft denies the remaining allegations of paragraph 76.

77. Microsoft admits that a paper titled *On Memorization in Probabilistic Deep Generative Models* by Gerritt J.J. van den Burg and Christopher K.I. Williams was published in 2021. Except as expressly admitted, Microsoft denies the remaining allegations in paragraph 77.

78. Microsoft admits that an article titled *How We Interact with Information: The New Era of Search* by Ben Ufuk Tezcan was published on September 19, 2023. Microsoft further admits that a pre-trained LLM is often placed into a broader product stack that involves various ways to “ground” the LLM’s outputs, and that the four steps described in paragraph 78 loosely describe the process known as retrieval-augmented-generation, which certain Microsoft AI products use. Except as expressly admitted, Microsoft denies the remaining allegations in paragraph 78.

C. Defendants’ Unauthorized Use and Copying of the Publishers’ Works

79. Microsoft lacks knowledge or information sufficient to form a belief about the particulars of the training of OpenAI’s models and on that basis denies those allegations.

Microsoft denies the remaining allegations in paragraph 79.

1. Unauthorized Reproduction of the Publishers’ Works During GPT Model Training

80. Microsoft admits the allegations in the first sentence of paragraph 80. Microsoft

further admits that OAI's models were pre-trained on a very large amount of data. Microsoft lacks knowledge or information sufficient to form a belief about the particulars of the training of OpenAI's models and on that basis denies those allegations. Microsoft denies the remaining allegations in paragraph 80.

81. Microsoft admits that a paper titled *Better Language Models and Their Implications* by OpenAI was published on February 14, 2019. Microsoft lacks knowledge or information sufficient to form a belief about the particulars of the training of OpenAI's models and on that basis denies the remaining allegations in paragraph 81.

82. Microsoft admits that a paper titled *Better Language Models and Their Implications* by OpenAI was published on February 14, 2019. Microsoft admits that the GPT-2 Model Card was last updated in November 2019. Microsoft admits that GPT-2 domain text files are available at <https://github.com/openai/gpt-2/blob/master/domains.txt>. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 82 and therefore denies them.

83. Microsoft admits that a paper titled *Language Models are Few-Shot Learners* by Tom Brown and others was published on July 22, 2020. Microsoft lacks knowledge or information sufficient to form a belief about the particulars of the training of OpenAI's models and on that basis denies the remaining allegations in paragraph 83.

84. Microsoft admits that a paper titled *Language Models are Few-Shot Learners* by Tom Brown and others was published on July 22, 2020. Microsoft lacks knowledge or information sufficient to form a belief about the particulars of the training of OpenAI's models and on that basis denies the remaining allegations in paragraph 84.

85. Microsoft admits that the Common Crawl website is available at

<https://commoncrawl.org/>. Microsoft admits that a paper titled *Documenting Large Webtext Corpora: A Case Study on the Colossal Clean Crawled Corpus* by Jesse Dodge and others was published in 2021. Microsoft lacks knowledge or information sufficient to form a belief about the particulars of the training of OpenAI's models and on that basis denies the remaining allegations in paragraph 85.

86. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 86 and therefore denies them.

87. Microsoft admits that a paper titled *Language Models are Few-Shot Learners* by Tom Brown and others was published on July 22, 2020. Microsoft lacks knowledge or information sufficient to form a belief about the particulars of the training of OpenAI's models and on that basis denies the remaining allegations in paragraph 87.

88. Microsoft admits that an article titled *GPT-4 Architecture, Datasets, Costs and More Leaked* by Maximilian Schreiner was published on July 11, 2023. Microsoft admits that an article titled *OpenAI GPT-3: Everything You Need to Know [Updated]* by Kindra Cooper was published on September 27, 2023. Microsoft lacks knowledge or information sufficient to form a belief about the particulars of the training of OpenAI's models and on that basis denies the remaining allegations in paragraph 88.

89. Microsoft lacks knowledge or information sufficient to form a belief about the particulars of the training of OpenAI's models and on that basis denies the allegations in paragraph 89.

90. Microsoft admits that it built and operates the Azure hosting platform, that it worked with OpenAI to design supercomputers suitable for training and operating large language models as part of the Azure hosting platform, and that the Azure hosting platform was used by

OpenAI to train and operate one or more of its LLMs. Except as expressly admitted, Microsoft denies the allegations in paragraph 90.

91. Microsoft admits that an article titled *Microsoft Thinks AI Can Beat Google at Search — CEO Satya Nadella Explains Why* by Nilay Patel was published on February 7, 2023. Microsoft admits that it built and operates the Azure hosting platform, that it worked with OpenAI to design supercomputers suitable for training and operating large language models as part of the Azure hosting platform, and that the Azure hosting platform was used by OpenAI to train and operate one or more of its LLMs. Except as expressly admitted, Microsoft denies the allegations in paragraph 91.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

2. Unauthorized Reproductions and Derivatives of the Publishers' Works Embodied in the GPT Models and Unauthorized Public Display of the Publishers' Works in GPT Product Outputs

96. Microsoft denies that the GPT LLMs “memorized” or encoded any copies of the Publishers’ Works. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 96, or as to the complete mechanism by which Plaintiffs obtained the output shown in Exhibit J, and therefore denies them.

97. Microsoft denies that any GPT LLMs memorize and Publishers’ Works, or that they embody unauthorized copies or derivatives of those works. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 97 and therefore denies them.

98. Microsoft admits that an article titled *What to do with a broken Illinois: Dissolve*

the Land of Lincoln by John Kass was published on June 20, 2017. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 98 or Exhibit J and therefore denies the remainder of the allegations contained in this paragraph.

99. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output referenced in paragraph 99 or Exhibit J and therefore denies the allegations contained in this paragraph.

100. Microsoft admits that an article titled *Trump administration secretly withheld millions from FDNY 9/11 health program* by Michael McAuliff was published on September 10, 2020. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 100 or Exhibit J and therefore denies the remainder of the allegations contained in this paragraph.

101. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output referenced in paragraph 101 or Exhibit J and therefore denies the allegations contained in this paragraph.

102. Microsoft admits that an article titled *Traffic fatalities linked to marijuana are up sharply in Colorado. Is legalization to blame?* by David Migoya was published on August 25, 2017. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 102 or Exhibit J and therefore denies the remainder of the allegations contained in this paragraph.

103. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output referenced in paragraph 103 or Exhibit J and therefore denies the allegations contained in this paragraph.

104. Microsoft admits that an article titled *Hide, deny, spin, threaten: How the school district tried to mask failures that led to Parkland shooting* by Brittany Wallman was published on November 30, 2018. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 104 or Exhibit J and therefore denies the remainder of the allegations contained in this paragraph.

105. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output referenced in paragraph 105 or Exhibit J and therefore denies the allegations contained in this paragraph.

106. Microsoft admits that an article titled *Oroville Dam: Feds and state officials ignored warnings 12 years ago* by Paul Rogers was published on February 12, 2017. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 106 or Exhibit J and therefore denies the remainder of the allegations contained in this paragraph.

107. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output referenced in paragraph 107 or Exhibit J and therefore denies the allegations contained in this paragraph.

108. Microsoft admits that an article titled *Our Orlando Sentinel endorsement for president in 2020: Not Donald Trump* by Orlando Sentinel and Orlando Sentinel Editorial Board was published June 18, 2019. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 108 or Exhibit J and therefore denies the remainder of the allegations contained in this paragraph.

109. Microsoft lacks knowledge or information sufficient to form a belief as to the

complete mechanism by which Plaintiffs obtained the output referenced in paragraph 109 or Exhibit J and therefore denies the allegations contained in this paragraph.

110. Microsoft admits that an article titled *Pixar grants girl's dying wish to see Up* by Annie Burris was published on June 18, 2009. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 110 or Exhibit J and therefore denies the remainder of the allegations contained in this paragraph.

111. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output referenced in paragraph 111 or Exhibit J and therefore denies the allegations contained in this paragraph.

112. Microsoft admits that an article titled *Inver Grove Heights massage business was a front for prostitution, charge say* by Nick Ferraro was published on July 22, 2019. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 112 or Exhibit J and therefore denies the remainder of the allegations contained in this paragraph.

113. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output referenced in paragraph 113 or Exhibit J and therefore denies the allegations contained in this paragraph.

3. Unauthorized Retrieval and Dissemination of Hot News

114. Microsoft admits that its generative search chatbot marketed initially under the name Bing Chat and later under the name Copilot uses a grounding technique. Otherwise, denied.

115. With respect to the allegations in paragraph 115 related to Bing Chat, denied. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the

remainder of the allegations in paragraph 115 and therefore denies them.

116. Denied.

117. Paragraph 117 states conclusions of law and argument to which no response is required. To the extent a response is nonetheless deemed necessary, Microsoft denies the allegations in paragraph 117.

118. Microsoft denies that Copilot creates unauthorized copies and derivatives of Plaintiffs' works. Microsoft admits that an article titled *A Lunar Eclipse Visits Denver Sunday, but it may not be noticeable* by John Meyer was published on March 22, 2024. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 118 or Exhibit J and therefore denies the remainder of the allegations contained in this paragraph.

119. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output referenced in paragraph 119 or Exhibit J and therefore denies the allegations contained in this paragraph.

120. Denied.

121. Microsoft admits that an article titled *16-year-old charged in Chatham triple homicide, authorities worry of violent youth crime* by Nell Salzman was published on March 21, 2024. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 121 or Exhibit J and therefore denies the remainder of the allegations contained in this paragraph.

122. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output referenced in paragraph 122 or Exhibit J and therefore denies the allegations contained in this paragraph.

123. Denied.

124. Microsoft admits that an article titled *Yankees not planning for additional schedule changes after eclipse delayed Monday Game* by Gary Phillips was published on April 7, 2024. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 124 or Exhibit J and therefore denies the remainder of the allegations contained in this paragraph.

125. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output referenced in paragraph 125 or Exhibit J and therefore denies the allegations contained in this paragraph.

126. Denied.

127. Microsoft admits that an article titled *After Palm Beach schools drop to a 'B' reading more important than ever* by Ted Hoskinson was published on February 21, 2024. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 127 or Exhibit J and therefore denies the remainder of the allegations contained in this paragraph.

128. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output referenced in paragraph 128 or Exhibit J and therefore denies the allegations contained in this paragraph.

129. Denied.

130. Microsoft admits that an article titled *Judge slaps an injunction on suspended Orlando commissioner Regina Hill* by Ryan Gillespie was published on April 5, 2024. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 130 or Exhibit J and

therefore denies the remainder of the allegations contained in this paragraph.

131. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output referenced in paragraph 131 or Exhibit J and therefore denies the allegations contained in this paragraph.

132. Denied.

133. Microsoft admits that an article titled *The Warriors are surging towards a best-case scenario* by Dieter Kurtenbach was published on April 10, 2024. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 133 or Exhibit J and therefore denies the remainder of the allegations contained in this paragraph.

134. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output referenced in paragraph 134 or Exhibit J and therefore denies the allegations contained in this paragraph.

135. Denied.

136. Microsoft admits that an article titled *Lakers fix errors on Kobe Bryant statue* by Khobi Price was published on April 9, 2024. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 136 or Exhibit J and therefore denies the remainder of the allegations contained in this paragraph.

137. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output referenced in paragraph 137 or Exhibit J and therefore denies the allegations contained in this paragraph.

138. Denied.

4. Willful Infringement

139. Microsoft lacks knowledge or information sufficient to form a belief about the particulars of the training of OpenAI's models or its internal disagreements and on that basis denies those allegations. The remainder of paragraph 139 is argument to which no response is required. To the extent a response is nonetheless deemed necessary, Microsoft denies the remainder of the allegations in paragraph 139.

140. Denied.

141. Denied.

D. Defendants' Material Contributions to End-User Infringement

142. Denied.

143. Denied.

144. Denied.

145. Microsoft admits that an article titled *'Browse With Bing' Disabled on ChatGPT Plus Because It Bypassed Paywalls* by Emily Dreibelbis was published on July 5, 2023.

Microsoft admits that an article titled *ChatGPT's Bing browsing feature disabled over paywall access flaw* by Trevor Mogg was published on July 4, 2023. Microsoft admits that an article titled *ChatGPT pulls plug on Bing integration after people used it to bypass paywalls* by Cesar Cadenas was published on July 5, 2023. Microsoft admits that a Reddit post titled *It looks like you can use ChatGPT to bypass paywalls* by HOLUPREDICTIONS gained 6.3K upvotes from Reddit users. Microsoft denies the remaining allegations in paragraph 145.

146. Microsoft admits that an article titled *How I Built an AI-Powered, Self-Running Propaganda Machine for \$105* by Jack Brewster was published on April 12, 2024. Microsoft admits that an article titled *The Year AI Supercharged Misinformation: NewsGuard's 2023 in Review* by Jack Brewster, Eric Effron, Zack Fishman, Sam Howard, Eva Maitland, McKenzie

Sadeghi, and Jim Warren was published on December 27, 2023. Microsoft denies the remaining allegations in paragraph 146.

147. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 147 and therefore denies them.

148. Microsoft admits that an article titled *Sandra Day O'Connor shone as a beacon for law's power and integrity* by Orlando Sentinel and Chicago Tribune Editorial Boards was published on December 8, 2023. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 148 and therefore denies the remainder of the allegations contained in this paragraph.

149. Microsoft admits that an article titled *Some smart ideas for State Street, that great street, but how about getting cops out of their cars?* by the Chicago Tribune Editorial Board was published on December 8, 2023. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 149 and therefore denies the remainder of the allegations contained in this paragraph.

150. Microsoft admits that an article titled *Newsom was originally right about California bullet train* by Dan Walters was published on December 12, 2023. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 150 and therefore denies the remainder of the allegations contained in this paragraph.

151. Microsoft admits that an article titled *We got Space Command, Camp Amache, and the Arkansas Valley Conduit* by the Denver Post Editorial Board was published on December 4, 2023. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 151 and

therefore denies the remainder of the allegations contained in this paragraph.

152. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 152 and therefore denies them.

153. Microsoft admits that it has the ability to monitor the behavior of certain users. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 153 and therefore denies them.

154. Microsoft admits that it is capable of monitoring certain outputs and that it has the ability to terminate certain user accounts. Microsoft admits that ChatGPT's Terms of Use provide the text contained in paragraph 154. Except as expressly admitted, Microsoft denies the allegations of paragraph 154.

155. Microsoft admits that the language quoted in paragraph 155 comes from its Terms of Use for Bing, which is available at <https://www.bing.com/new/termsfuse>. Except as expressly admitted, Microsoft denies the allegations of paragraph 155.

156. Denied.

E. Defendants' Removal of Copyright Management Information from the Publishers' Works

157. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 157 and therefore denies them.

158. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 158 and therefore denies them.

159. Denied.

160. Denied.

161. Microsoft denies that it trained the models at issue or that copyright-management information was removed. The remaining allegations in Paragraph 161 state conclusions of law

and argument for which no response is required. To the extent a response is nonetheless required, Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 161 and therefore denies them.

162. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 162 and therefore denies them.

163. Microsoft denies that it trained the models at issue or that copyright-management information was removed. The remaining allegations in Paragraph 163 state conclusions of law and argument for which no response is required. To the extent a response is nonetheless required, Microsoft denies the allegations in paragraph 163.

164. Denied.

165. Microsoft admits that an article titled *Judge says Brooklyn woman can use Facebook to serve divorce papers* by Barbara Ross and Dareh Gregorian was published on April 6, 2015. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 165 and therefore denies the remainder of the allegations contained in this paragraph.

166. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 166 and therefore denies them.

167. Paragraph 167 states conclusions of law and argument for which no response is required. To the extent a response is nonetheless required, Microsoft denies the allegations in paragraph 167.

168. Microsoft admits that an article titled *What the Mets see in veteran righty Julio Teheran: 'He's a veteran, he knows how to navigate a lineup'* by Abbey Mastracco was published on April 8, 2024. Microsoft denies that copyright-management information was

removed. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 168 and therefore denies them.

169. Denied.

F. Hallucinations Falsely Attributed to the Publishers

170. Denied.

171. Microsoft admits that an article titled *Artificial Hallucinations in ChatGPT: Implications in Scientific Writing* by Hussam Alkaissi and Samy I McFarlan was published on February 19, 2023. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 171 and therefore denies them.

172. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 172 and therefore denies the allegations contained in this paragraph.

173. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 173 and therefore denies the allegations contained in this paragraph.

174. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 174 and therefore denies the allegations contained in this paragraph.

175. Microsoft lacks knowledge or information sufficient to form a belief as to the complete mechanism by which Plaintiffs obtained the output shown in paragraph 175 and therefore denies the allegations contained in this paragraph.

176. Denied.

G. Profit to Defendants

177. Denied.

178. Denied.

179. Microsoft admits that an article titled *107 Up-to-Date ChatGPT Statistics & User Numbers* was published by Nerdynav. The link provided in the Complaint was updated in April 2025, so Microsoft therefore lacks information sufficient to confirm these allegations in the Complaint and on that basis denies them. Microsoft admits that a blog post titled *Introducing ChatGPT Plus* by OpenAI was published on February 1, 2023. Microsoft admits that a blog post titled *Introducing ChatGPT Enterprise* by OpenAI was published on August 28, 2023. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 179 and therefore denies them.

180. Microsoft admits that an article titled *OpenAI hits \$2 bln revenue milestone - FT* by Reuters was published on February 9, 2024. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 180 and therefore denies them.

181. Microsoft admits that an article titled *Microsoft's Investment into ChatGPT's Creator May Be the Smartest \$10 Billion Ever Spent* by Hasan Chowdhury was published on January 6, 2023. Microsoft admits that an article titled *ChatGPT's Creator OpenAI Has Doubled in Value Since 2021 as the Language Bot Goes Viral and Microsoft Pours in \$10 Billion* by Phil Rosen was published on January 24, 2023. Microsoft admits that an article titled *OpenAI valued at \$80 billion after deal, NYT reports* by Reuters was published on February 16, 2024. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 181 and therefore denies them.

182. Microsoft admits that an article titled *Microsoft Bing Hits 100 Million Active Users in Bid to Grab Share from Google* by Tom Warren was published on March 9, 2023.

Microsoft admits that an article titled *OpenAI Tech Gives Microsoft's Bing a Boost in Search Battle with Google* by Akash Sriram and Chavi Mehta was published on March 22, 2023.

Microsoft admits that an article titled *Microsoft's heavy bet on AI pays off as it beats expectations in latest quarter* by Blake Montgomery was published on April 25, 2024.

Microsoft admits that, as of March 8, 2023, Bing surpassed 100 million Daily Active Users and that Bing page visits have increased in the six weeks after Bing Chat went live. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 182 and therefore denies them.

183. Microsoft admits that it has started to integrate one or more of OpenAI's LLMs into its Office 365 products and that it charges separately for this feature. Microsoft admits that it charges \$30 per user per month for Microsoft 365 Copilot, which uses one or more of OpenAI's LLMs. Microsoft admits that an article titled *Microsoft Launches Teams Premium with Features Powered by OpenAI* by Tom Warren was published on February 2, 2023.

Microsoft admits that an article titled *Microsoft Announces Copilot: The AI-Powered Future of Office Documents* by Tom Warren was published on March 16, 2023. Microsoft admits that an article titled *Microsoft Puts a Steep Price on Copilot, Its AI-Powered Future of Office Documents* by Tom Warren was published on July 18, 2023. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 183 and therefore denies them.

H. Harm to the Publishers

184. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 184 and therefore denies them. Microsoft denies the remaining allegations in paragraph 184.

185. Denied.

186. Paragraph 186 states conclusions of law and argument to which no response is required. To the extent a response is nonetheless deemed necessary, Microsoft denies the allegations in paragraph 186.

187. Paragraph 187 states conclusions of law and argument to which no response is required. To the extent a response is nonetheless deemed necessary, Microsoft denies the allegations in paragraph 187.

188. Denied.

189. Denied.

COUNT I: Copyright Infringement (17 U.S.C. § 501)

On Behalf of the Publishers Against All Defendants

190. Microsoft realleges and incorporates by reference its foregoing responses to the preceding paragraphs as if fully set forth herein.

191. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 191, or as to the contents of Exhibits A-H, and therefore denies them.

192. Microsoft denies that it trained the models at issue. Microsoft admits that Plaintiffs hold certain rights under 17 U.S.C. § 106 in the works which have registered copyrights. The remaining allegations in paragraph 192 state conclusions of law and argument to which no response is required. To the extent a response is nonetheless deemed necessary, Microsoft denies the allegations in paragraph 192.

193. Denied.

194. Denied.

195. Denied.

196. Denied.

197. Denied.

198. Denied.

199. Denied.

200. Denied.

201. Denied.

COUNT II: Vicarious Copyright Infringement

On Behalf of the Publishers Against Microsoft, OpenAI, Inc., OpenAI, GP, OpenAI LP, OAI Corporation, LLC, OpenAI Holdings, LLC, and OpenAI Global, LLC

202. Microsoft realleges and incorporates by reference its foregoing responses to the preceding paragraphs as if fully set forth herein.

203. Denied.

204. Denied.

205. Denied.

206. Denied.

COUNT III: Contributory Copyright Infringement

On Behalf of the Publishers Against Microsoft

207. Microsoft realleges and incorporates by reference its foregoing responses to the preceding paragraphs as if fully set forth herein.

208. Denied.

209. Denied.

210. Denied.

COUNT IV: Contributory Copyright Infringement

On Behalf of the Publishers Against All Defendants

211. Microsoft realleges and incorporates by reference its foregoing responses to the preceding paragraphs as if fully set forth herein.

212. Denied.

213. Denied.

214. Denied.

COUNT V: Digital Millennium Copyright Act – Removal of Copyright Management Information (17 U.S.C. § 1202)

On Behalf of the Publishers Against All Defendants

215. Microsoft realleges and incorporates by reference its foregoing responses to the preceding paragraphs as if fully set forth herein.

216. No response to this paragraph is required because Count V of the Complaint was dismissed with prejudice. Dkt. No. 333. To the extent a response is deemed required, Microsoft denies the allegations in paragraph 216.

217. No response to this paragraph is required because Count V of the Complaint was dismissed with prejudice. Dkt. No. 333. To the extent a response is deemed required, Microsoft denies the allegations in paragraph 217.

218. No response to this paragraph is required because Count V of the Complaint was dismissed with prejudice. Dkt. No. 333. To the extent a response is deemed required, Microsoft denies the allegations in paragraph 218.

219. No response to this paragraph is required because Count V of the Complaint was dismissed with prejudice. Dkt. No. 333. To the extent a response is deemed required, Microsoft denies the allegations in paragraph 219.

220. No response to this paragraph is required because Count V of the Complaint was dismissed with prejudice. Dkt. No. 333. To the extent a response is deemed required, Microsoft

denies the allegations in paragraph 220.

221. No response to this paragraph is required because Count V of the Complaint was dismissed with prejudice. Dkt. No. 333. To the extent a response is deemed required, Microsoft denies the allegations in paragraph 221.

222. No response to this paragraph is required because Count V of the Complaint was dismissed with prejudice. Dkt. No. 333. To the extent a response is deemed required, Microsoft denies the allegations in paragraph 222.

223. No response to this paragraph is required because Count V of the Complaint was dismissed with prejudice. Dkt. No. 333. To the extent a response is deemed required, Microsoft denies the allegations in paragraph 223.

224. No response to this paragraph is required because Count V of the Complaint was dismissed with prejudice. Dkt. No. 333. To the extent a response is deemed required, Microsoft denies the allegations in paragraph 224.

225. No response to this paragraph is required because Count V of the Complaint was dismissed with prejudice. Dkt. No. 333. To the extent a response is deemed required, Microsoft denies the allegations in paragraph 225.

COUNT VI: Common Law Unfair Competition By Misappropriation

On Behalf of the Publishers Against All Defendants

226. Microsoft realleges and incorporates by reference its foregoing responses to the preceding paragraphs as if fully set forth herein.

227. No response to this paragraph is required because Count V of the Complaint was dismissed with prejudice. Dkt. No. 333. To the extent a response is deemed required, Microsoft denies the allegations in paragraph 227.

228. No response to this paragraph is required because Count V of the Complaint was dismissed with prejudice. Dkt. No. 333. To the extent a response is deemed required, Microsoft denies the allegations in paragraph 228.

229. No response to this paragraph is required because Count V of the Complaint was dismissed with prejudice. Dkt. No. 333. To the extent a response is deemed required, Microsoft denies the allegations in paragraph 229.

230. No response to this paragraph is required because Count V of the Complaint was dismissed with prejudice. Dkt. No. 333. To the extent a response is deemed required, Microsoft denies the allegations in paragraph 230.

231. No response to this paragraph is required because Count V of the Complaint was dismissed with prejudice. Dkt. No. 333. To the extent a response is deemed required, Microsoft denies the allegations in paragraph 231.

232. No response to this paragraph is required because Count V of the Complaint was dismissed with prejudice. Dkt. No. 333. To the extent a response is deemed required, Microsoft denies the allegations in paragraph 232.

COUNT VII: Trademark Dilution (15 U.S.C. § 1125(c))

On Behalf of Daily News, LP; Chicago Tribune Company, LLC; San Jose Mercury-News, LLC; and DP Media Network, LLC Against All Defendants

233. Microsoft realleges and incorporates by reference its foregoing responses to the preceding paragraphs as if fully set forth herein.

234. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 234 and therefore denies them.

235. Denied.

236. Denied.

237. Denied.

238. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 238 and therefore denies them.

239. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 239 and therefore denies them.

240. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 240 and therefore denies them.

241. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 241 and therefore denies them.

242. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 242 and therefore denies them.

243. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 243 and therefore denies them.

244. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 244 and therefore denies them.

245. Microsoft lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 245 and therefore denies them.

246. Denied.

247. Denied.

248. Denied.

249. Denied.

COUNT VIII: Dilution and Injury to Business Reputation (N.Y. Gen. Bus. Law § 360-l)

On Behalf of Daily News, LP; Chicago Tribune Company, LLC; San Jose Mercury-News, LLC; and DP Media Network, LLC Against All Defendants

250. Microsoft realleges and incorporates by reference its foregoing responses to the preceding paragraphs as if fully set forth herein.

251. Paragraph 251 states conclusions of law to which no response is required. To the extent a response is nonetheless deemed necessary, Microsoft denies the allegations in paragraph 251.

252. Paragraph 252 states conclusions of law to which no response is required. To the extent a response is nonetheless deemed necessary, Microsoft denies the allegations in paragraph 252.

253. Denied.

254. Denied.

PRAYER FOR RELIEF

Microsoft denies that Plaintiff is entitled to any relief whatsoever, including but not limited to the relief sought in the section of the Complaint titled “Prayer for Relief.” To the extent that this section contains any allegations requiring a response, Microsoft denies them.

JURY DEMAND

Microsoft hereby demands a trial by jury on all claims, defenses, and issues in this action so triable.

* * *

DEFENSES

In addition to the above, Microsoft asserts the following defenses. Each defense is asserted as to all claims for relief against Microsoft, unless otherwise noted. By setting forth these defenses, Microsoft does not concede that these are affirmative defenses and does not assume the burden of proving any fact, issue, or element of a claim for relief where such burden properly belongs to Plaintiffs. Further, nothing stated herein is intended or shall be construed as an acknowledgement that any particular issue or subject matter necessarily is relevant to Plaintiffs' allegations. Microsoft reserves the right to amend its Answer as additional information becomes available and to assert additional defenses to the extent such defenses are or become applicable.

FIRST DEFENSE **(Failure to State a Claim)**

Plaintiffs' claims fail, in whole or in part, because the Complaint, and each purported cause of action therein, fails to state a claim upon which relief may be granted and/or to state facts sufficient to constitute a claim for relief against Microsoft.

SECOND DEFENSE **(Fair Use)**

Plaintiffs' claims fail, in whole or in part, because any unauthorized copies of any of Plaintiffs' copyrighted works made for the purposes described in the Complaint constitute fair use under 17 U.S.C. § 107.

THIRD DEFENSE **(Substantial Noninfringing Uses)**

Plaintiffs' claims fail, in whole or in part, because all of the models accused of infringement, and all of Microsoft's generative AI search products and services offered in

connection with those models that are accused of infringement, are capable of substantial noninfringing uses.

FOURTH DEFENSE
(Works or Elements of Works Not Protected by Copyright)

Plaintiffs' claims fail, in whole or in part, to the extent they claim rights to elements of works or to works which are not protectable under copyright law, such as under the doctrines of *scènes à faire*, merger, or under 17 U.S.C. § 102(b), or that are in the public domain, lack the requisite originality, are unregistered, or are works to which copyright protection has been abandoned.

FIFTH DEFENSE
(Invalid Ownership / Lack of Ownership)

Plaintiffs' claims fail, in whole or in part, to the extent they assert copyrights that they do not own or exclusively license in the first instance, including but not limited to purported copyrights in individual newspaper articles, and/or in the full scope of their collective works.

SIXTH DEFENSE
(Lack of Standing)

Plaintiffs' claims fail, in whole or in part, because they lack standing to bring suit and assert copyrights in any works that they do not own or exclusively license, including pursuant to 17 U.S.C. § 501(b).

SEVENTH DEFENSE
(DMCA Safe Harbor)

Plaintiffs' claims fail, in whole or in part, because they are barred by the safe harbor provisions of the Digital Millenium Copyright Act, 17 U.S.C. § 512 (a)-(d).

EIGHTH DEFENSE
(De Minimis Copying or Use)

Plaintiffs' claims fail, in whole or in part, because they are barred by the doctrine of *de minimis* copying or use.

NINTH DEFENSE
(Acts of Third Parties)

Plaintiffs' claims fail, in whole or in part, because any reproduction, distribution, or display of any allegedly infringing outputs, or copies allegedly made in the generative search process, were caused by the acts or omissions of other persons or entities for whose conduct Microsoft is not legally responsible.

TENTH DEFENSE
(Lack of Injury)

Plaintiffs' claims fail, in whole or in part, because Plaintiffs have not suffered and are not likely to suffer any injury or damages as a result of the conduct alleged of Microsoft in the Complaint.

ELEVENTH DEFENSE
(Unavailability of Injunctive Relief)

Plaintiffs' claims fail, in whole or in part, because Plaintiffs are not entitled to injunctive relief (temporarily, preliminarily, or permanently), including because any injury to it is not immediate or irreparable, Plaintiffs would have an adequate remedy at law, the balance of hardships favors no injunction, and the public interest is best served by no injunction.

TWELFTH DEFENSE
(Unconstitutional Damages)

Plaintiff seeks improper damages in violation of the United States Constitution and other applicable law. Any award of statutory or enhanced damages would constitute an unconstitutional penalty under the circumstances of this case and would violate the due process and equal protection

guarantees, and other substantive and procedural safeguards afforded by the United States Constitution.

THIRTEENTH DEFENSE
(Implied License)

Plaintiffs' claims fail, in whole or in part, because Plaintiffs were actually aware of and chose not to implement tools offered by Microsoft that would have included their copyrighted material in the Bing search index while at the same time readily enabling the exclusion of their copyrighted material from use by Microsoft in connection with its generative AI products and services. Plaintiffs' knowing failure to adopt such tools while engaging in ongoing communications and business relations with Microsoft relative to the publication and listing of its works in the Bing search index constitutes an implied license.

FOURTEENTH DEFENSE
(Unclean Hands)

Plaintiffs' claims fail, in whole or in part, because Plaintiffs engaged in inequitable conduct in generating and alleging the outputs described in the Complaint.

FIFTEENTH DEFENSE
(Trademark Fair Use)

Plaintiffs' claims as to its alleged trademarks fail, in whole or in part, because Plaintiffs' claims are barred by the doctrine of fair use, including pursuant to 15 U.S.C. § 1115(b)(4).

SIXTEENTH DEFENSE
(Lack of Fame, Inherent Distinctiveness, and/or Secondary Meaning)

Plaintiffs' claims as to its alleged trademarks fail, in whole or in part, because Plaintiffs' alleged trademarks are not famous, or inherently distinctive, and have not acquired secondary meaning.

SEVENTEENTH DEFENSE
(No Trademark Use)

Plaintiffs' claims as to its alleged trademarks fail, in whole or in part, because Plaintiffs' allegations do not demonstrate a cognizable trademark use.

RESERVATION OF ADDITIONAL DEFENSES

Microsoft's investigation of the claims and its defenses is continuing. Microsoft reserves the right to assert additional defenses, such as through amendment of its Answer, that may develop through discovery in this action or otherwise.

REQUEST FOR RELIEF

Therefore, Microsoft respectfully requests that this Court:

1. Enter judgment in Microsoft's favor and against Plaintiffs;
2. Dismiss all claims by Plaintiffs with prejudice;
3. Award Microsoft its costs of suit;
4. Award Microsoft its attorneys' fees to the extent permitted by law; and
5. Grant Microsoft such other and further relief as this Court deems just and proper.

Dated: April 29, 2025

By: /s/ Annette L. Hurst

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